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# PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)  
31083.05US5

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on March 7, 2007

Signature

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Application Number

09/867,068

Filed

05/29/2001

First Named Inventor  
Robert H. Scheer

Art Unit

3623

Examiner

Jarrett, Scott L.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

x

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

x

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.

Registration number 35,906

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

*Gary R. Jarosik*

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Telephone number

March 7, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

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## REQUEST FOR PRE-APPEAL REVIEW

In the application claims 1-5, 9, 10, and 12-14 remain pending. Claims 6-8, 11, and 15-22 have been canceled without prejudice. No claims presently stand allowed.

The pending claims presently stand rejected under 35 U.S.C. § 103 as allegedly being rendered obvious over Kirkevold (U.S. Patent No. 6,263,322) in view of Huang (U.S. Patent No. 5,953,707) in further view of Graves (an article entitled “A Multiple Item Inventory Model With A Job Completion Criterion.”).

In response to this rejection it is first respectfully submitted that the rejection of the claims fails to meet the burdens associated with presenting a *prima facie* case of obviousness. Specifically, to present a *prima facie* case of obviousness, it must at least be asserted that all of the claimed elements are taught or suggested by the prior art. In the subject application, the pending claims are apparatus claims which further positively recite a customer maintenance system, a customer agent server, and a distributor system. While the pending claims are apparatus claims, the rejection of the claims merely relies upon various method steps that are allegedly disclosed within the references being relied upon with the positively recited elements of a customer maintenance system, a customer agent server, and a distributor system simply being ignored. Accordingly, since the rejection of the claims **never even asserts that the references, whether considered alone or in combination, disclose, teach, or suggest the expressly claimed customer maintenance system, customer agent server, or distributor system**, as is required at a minimum to meet the burdens associated with presenting a *prima facie* case of obviousness, it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

Considering now Kirkevold, Kirkevold discloses a system in which a work order, i.e., an automobile repair order, is provided to a shop management computer. However, while Kirkevold may disclose a system which accepts a work order and which may also be used to procure items, e.g., via a “Request Part Order” function, it is respectfully submitted that Kirkevold does not disclose, teach, or suggest, either expressly or inherently, that a customer agent system or any other computing device initiates a procurement of items using the “Request Part Order” function or any other function by extracting information from a work order prior to commencement of a repair procedure as alleged in the rejection of the claims. Furthermore, Kirkevold does not disclose, teach, or suggest a customer agent system or any other computing device extracting information from a work order *in response* to the user entering or modifying the work order as is recited in dependent claim 5. Rather, Kirkevold merely describes that the “Request Part Order” may be used to place an order *for an out of stock* part by being provided a part identification number. Accordingly, since Kirkevold fails to disclose, teach, or suggest a customer agent server in communication with a customer maintenance system which extracts from a work order entered into the customer maintenance system information that identifies at least items expected to be used during a repair procedure and which uses the information extracted from the work order to create an advance demand notice order for the items as is claimed, it is respectfully submitted that the combination of Kirkevold, Huang, and Graves cannot be said to present a *prima facie* case of obviousness and the rejection under 35 U.S.C. § 103 must be withdrawn.

Considering now Huang, Huang describes that, as part of supply chain decision process (shown in Fig. 9), it may be desirable to estimate future repair requirements to thereby establish a replenishment policy for an inventory of a facility. However, while Huang describes that this

mental process may be used in connection with formulating a detailed repair plan, it is respectfully submitted that Huang simply fails to disclose, teach, or suggest that which has been acknowledged to be missing from Kirkevold, namely, a distributor system in communication with a customer agent server which *responds* to a receipt of an advance demand notice order (generated from a work order by the customer agent server) by determining, based on calculated probabilities or anything else, at which one or more of a plurality of geographic locations within a supply chain each of the items (specified in the advance demand notice order) needs to be positioned prior to commencement of the repair procedure. Accordingly, since Huang fails to disclose, teach, or suggest this positively recited claim element, it is respectfully submitted that the combination of Kirkevold, Huang, and Graves cannot be said to present a *prima facie* case of obviousness and the rejection under 35 U.S.C. § 103 must be withdrawn.

Considering now Graves, while Graves may disclose a formula which uses a calculated probability that an item or set of items will need to be used during a repair procedure to minimize inventory holding costs, it is respectfully submitted that Graves fails to disclose, teach, or suggest the desirability of using such a formula in connection with a distributor system that is in communication with a customer agent system whereby the distributor system will be adapted to respond to a receipt of an advance demand notice order from the customer agent system by calculating a probability that each item specified in the advance demand notice order will be needed in a repair procedure and to further use the calculated probabilities to determine at which one of a plurality of geographical locations within a supply chain the items need to be positioned. Rather, the only reference of record that would suggest the desirability of using such a calculation in a distributor system of a transaction network for the purpose of determining at which of a plurality of geographical locations items are to be staged is the subject application.

Thus, since the teaching or suggestion to provide such a distributor system cannot be found in any of Kirkevold, Huang, or Graves, with the teaching or suggestion **only** being found within the subject application, it is respectfully submitted that it is evident that the rejection of the claims could only have been arrived at through the impermissible use of the claimed invention as an instruction manual or "template" to piece together the individual elements that have been selected in isolation from the various references. For at least this reason, it is respectfully submitted that the combination of Kirkevold, Huang, and Graves fails to present a *prima facie* case of obviousness and the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

#### CONCLUSION


It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the reviewing panel is respectfully requested. Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned.

The Commissioner is authorized to charge any fee deficiency or credit overpayment to deposit account 50-2428 in the name of Greenberg Traurig.

Respectfully Submitted;

Date: March 7, 2007

By:



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